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**DECISION**



B. Japikura  
Proc II

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

FILE: B-190117

DATE: January 24, 1978

MATTER OF: Vito's Trucking and Excavating Co.

**DIGEST:**

GAO will not review award of procurement under grant where state has entered final judgment on matter.

Through counsel, Vito's Trucking and Excavating Co. (Vito), seeks our review of decisions of the Environmental Protection Agency (EPA) and the grantee City of Fort Lauderdale, Florida (City), concerning projects 3575 and 4082, for the construction of an interconnector force main and sludge transmission line under EPA Grant C-12047403.

It appears that Vito submitted the low composite bid in the amount of \$3,300,325. Inman, Inc. submitted the second low bid, at \$3,354,184. A protest by Inman pursuant to EPA's bid protest procedures (40 C.F.R. §35.939) resulted in a determination by the EPA Regional Administrator in Inman's favor, resulting in the rejection of Vito's bid. On reconsideration, the EPA Regional Administrator affirmed his decision. The City has concurred in the EPA findings and has determined that Vito's bid was nonresponsive.

It further appears that counsel for Vito sought a temporary restraining order against the City in the Circuit Court of the 17th Judicial Circuit of Florida, seeking to prevent the grantee from awarding the contract to Inman while this case was presented for our review. The Court denied a TRO and in a final judgment dismissed Vito's complaint based, in part, upon a finding that Vito had failed to establish that award to Inman would be improper.

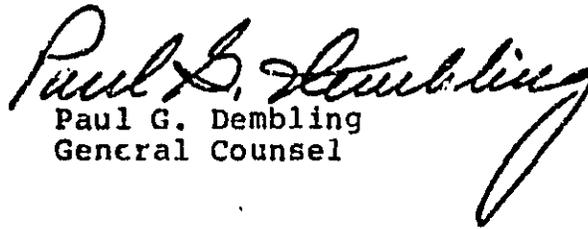
In Grumman Ecosystems Corp., B-184617, October 24, 1975, 75-2 CPD 252, we held that our long standing policy not to decide matters which have been the subject of litigation on the merits in a court of competent jurisdiction would be applied in grant related contract cases. This rule was extended in The Volpe Construction Co., B-189280, July 6, 1977, 77-2 CPD 9, where a state rather than federal

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court was involved. See, also, Commissioners of Cuyahoga County, B-189626, August 12, 1977, 77-2 CPD 115. Moreover, although a ruling on a temporary restraining order or preliminary injunction is not of itself a final adjudication on the merits, we will not ordinarily consider a case in which a TRO is sought unless the Court expresses an interest in our decision, or the matter is first dismissed without prejudice. See, e.g., Optimum Systems, Inc., B-187560, August 31, 1977, 77-2 CPD 165.

Where, as here, the Court enters final judgment in the matter a request by the protester for GAO review will not be considered.

Accordingly, Vito's complaint is dismissed.

  
Paul G. Dembling  
General Counsel